

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DUKE WAIT,

Plaintiff,

vs.

D. HOLM, SENIOR, D. BROWN, JOHN DOE
OFFICER, *et al.*,

Defendants.

2:18-cv-02038-GMN-VCF

**REPORT AND RECOMMENDATION FOR
DISMISSAL**

Before the court is *Duke Wait v. D. Holm, et al.*, case number 2:18-cv-02038-GMN-VCF.

On December 2, 2020, the Clerk's office received notification from High Desert State Prison Law Library that the December 1, 2020 Order (ECF No. 30) was undeliverable to Plaintiff Duke Wait. (ECF No. 31). The HDSP Law Library informed the court that Wait was no longer incarcerated and has been discharged. *Id.*

On February 16, 2021, the Court ordered, "[p]ursuant to LR IA 3-1, plaintiff must immediately file written notification with the court of any change of address. The notification must include proof of service upon each opposing party's attorney, or upon the opposing party if the party is unrepresented by counsel. Failure to comply with this rule may result in dismissal of the action." (ECF No. 32). Wait was ordered to update his contact information by March 2, 2021. *Id.* Mail was returned as undeliverable. (ECF No. 33). To date, Wait has not updated his contact information.

Here, Wait failed to update his address with the Court and failed to comply with ECF No. 32.

The Court has clear authority to dismiss the case for failure to cooperate in the progress of the litigation. "This power is necessary to prevent undue delays in the disposition of pending cases, docket

1 congestion, and the possibility of harassment of the Defendant." *Medeiros v. United States*, 621 F.2d 468,
2 470 (1st Cir. 1980). To be sure, "[all litigants, including *pro ses*, have an obligation to comply with court
3 orders." *Minotti v. Lensink*, 895 F.2d 100, 103 (2d Cir. 1990)(per curiam). Thus, when they flout the
4 obligation to comply with court orders they, like all litigants, must suffer the consequences of their non-
5 compliance. See *McDonald v. Miegel*, 850 F.2d 121, 124 (2d Cir. 1988). Further, the Court need not
6 always exhaust every sanction short of dismissal before final action. *Edelson v. Commissioner*, 829 F.2d
7 828, 831 (9th Cir. 1987). Such a decision lies within the discretion of this Court. See *National Hockey*
8 *League v. Metropolitan Hockey Club, Inc.*, 427 U.S. 639, 642 (1976); *Link v. Wabash R. Co.*, 370 U.S.
9 628 (1962) (affirming district court's dismissal under Rule 41(b) after plaintiff's attorney failed to appear
10 at a pretrial conference).

11 In determining whether to dismiss an action for lack of prosecution, failure to obey a court order,
12 or failure to comply with local rules, the court must consider several factors:

13 (1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage
14 its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases
15 on their merits; and (5) the availability of less drastic alternatives. See *Thompson*, 782 F.2d at 831;
16 *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at 130; *Ferdik*, 963 F.2d at 1260-61; *Ghazali*, 46 F.3d
17 at 53.

18 Here, the Court finds that the first two factors, the public's interest in expeditiously resolving this
19 litigation and the Court's interest in managing the docket, weigh in favor of dismissal. The third factor,
20 risk of prejudice to Defendants, also weighs in favor of dismissal, since a presumption of injury
21 arises from the occurrence of unreasonable delay in filing a pleading ordered by the court or prosecuting
22 an action. See *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor—public
23 policy favoring disposition of cases on their merits—is greatly outweighed by the factors in favor
24 of dismissal discussed herein. Finally, a court's warning to a party that his failure to obey the court's
25 order will result in dismissal satisfies the "consideration of alternatives" requirement. *Ferdik*, 963

1 F.2d at 1262; *Malone*, 833 F.2d at 132-33; *Henderson*, 779 F.2d at 1424. The Court's order
2 requiring Plaintiff to file his updated address with the Court on or before March 2, 2021, expressly stated:
3 "Failure to comply with this rule may result in the dismissal of the action, entry of default judgment, or
4 other sanctions as deemed appropriate by the court." (ECF No. 32). Thus, Plaintiff had adequate warning
5 that dismissal would result from his noncompliance with the Court's to file his updated address by March
6 2, 2021. Wait has failed to follow the rules of this Court and comply with LR IA 3-1. (ECF No. 32).

7 Accordingly,

8 IT IS HEREBY RECOMMENDED that this case be dismissed for failure to comply LR IA 3-1
9 and with Court Order (ECF No. 32).

10 The Court Clerk is directed to mail a copy of this order to Plaintiff.

11 **NOTICE**

12 Pursuant to Local Rule IB 3-2, any objection to this Finding and Recommendation must be in
13 writing and filed with the Clerk of the Court within fourteen (14) days. The Supreme Court has held that
14 the courts of appeal may determine that an appeal has been waived due to the failure to file objections
15 within the specified time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This circuit has also held that (1)
16 failure to file objections within the specified time and (2) failure to properly address and brief the
17 objectionable issues waives the right to appeal the District Court's order and/or appeal factual issues from
18 the order of the District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991); *Britt v. Simi Valley*
19 *United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).

20
21 DATED this 12th day of March, 2021.



22
23 CAM FERENBACH
24 UNITED STATES MAGISTRATE JUDGE
25